EVIDENCE—ADMISSIONS—CONDUCT.

2. A party's conduct, indicating a belief in the weakness of his case, may be shown against him as an admission, subject to explanations he may offer.

[Ed. Note.—For cases in point, see vol. 20, Cent. Dig. Evidence, sec. 762.]

SPECIFIC PERFORMANCE—CONTRACT TO CONVEY LAND—POSSESSION AND IMPROVEMENTS BY PURCHASER.

3. Where defendant's ancestor took possession of the land under contract binding plaintiff to convey the same, and improved the same, and continued in the possession thereof for many years with the acquiescence of plaintiff, it was inequitable to refuse specific performance of the contract.

PRUDENTIAL FIRE INSURANCE CO v. ALLEY.

September 14, 1905.

[51 S. E. 812]

INSURANCE—STIPULATIONS IN POLICY—WARRANTIES.

1. A stipulation in a policy insuring a stock of merchandise, requiring the assured to make periodical inventories, to keep books and to keep the inventories and books in a fireproof safe at night, or the policy shall be void, is a warranty, and a compliance therewith is a condition precedent to a recovery, for a loss; Va. Code 1904, p. 1766, Sec. 3344a, providing that no answer to interrogatories made by an applicant for a policy shall bar a recovery thereon by reason of any warranty in the application, unless the answer was willfully false, not applying to the stipulation.

[Ed. Note.—For cases in point, see vol. 28, Cent. Dig. Insurance, Sec. 853.]

SAME—STOCK OF GOODS—KEEPING OF BOOKS—COMPLIANCE.

2. A stipulation in a policy insuring a stock of merchandise, requiring the assured to keep books showing a record of the business transacted, including purchases, sales, and shipments for cash and credit, is complied with by the assured keeping books so that, with the assistance of those who kept them, the amount of the purchases and sales could be ascertained and cash transactions distinguished from credit transactions.

[Ed. Note.—For cases in point, see vol. 28, Cent. Dig. Insurance, Sec. 853.]

SAME—INVENTORIES OF GOODS INSURED—COMPLIANCE.

3. A policy insuring a stock of merchandise required the assured to take periodical inventories, and, unless an inventory had been taken within a year prior to the date of the policy, one should be taken within 30 days of the issuance of the policy. The assured took an inventory of his stock June 10th. Subsequently he shipped the goods to another town and commenced business there, and the policy was issued June 25th, insuring the goods and the building in which they were placed. The inventory

embraced articles not shipped to the new place of business, but these were accounted for as if sold for cash. *Held* that the inventory sufficiently complied with the policy.

SAME—BOOKS OF ACCOUNT—SUFFICIENCY.

4. A policy insuring a stock of merchandise required the assured to keep books presenting a record of the business transacted, including purchases, sales, and shipments, both for cash and credit. The book of purchases kept by the assured did not give an itemized statement of goods purchased, but showed the amount of each bill of goods purchased, when, and from whom. The book of sales did not give an itemized statement of goods sold, but gave, with exceptions explained, the amount of each day's sales. No goods were authorized to be sold on credit, and such goods as were sold without being paid for were treated as cash sales on the book and accounted for as cash by the clerk making the sale. *Held*, that the books sufficiently complied with the policy.

SAME—INCREASE OF RISK—QUESTION FOR JURY.

5. Whether the erection of a building near the storehouse of assured was an additional risk was for the jury, and was not a question to determine which expert knowledge was proper.

[Ed. Note.—For cases in point, see vol. 28, Cent. Dig. Insurance, Sec. 1741.]

SAME—ACTION ON POLICY—EVIDENCE—ADMISSIBILITY.

6. Where, in an action on a policy insuring a stock of merchandise, the insurer alleged that the assured was guilty of fraud in procuring the policy and of false swearing after a loss, it was not error to permit witnesses to testify as to the value of the goods destroyed, based on what they saw in the storehouse.

[Ed. Note.—For cases in point, see vol. 28, Cent. Dig Insurance, Sec. 1695.]

SAME—AGENTS—DECLARATIONS.

7. In an action on a fire policy it was shown that an insurance agency was an agent of the insurer and was authorizd to issue policies. A third person was furnished with blank applications by the agency and solicited insurance for it, and represented to the assured that he was working for the agency and induced him to take out the policy afterwards issued by the agency. He was authorized to deliver policies and collect premiums issued on applications procured by him and accepted by the agency. It did not appear that he procured insurance for other agencies. *Held*, that he was an agent of the insurer, rendering declarations made by him admissible in evidence.

[Ed. Note.—For cases in point, see vol. 28, Cent. Dig. Insurance, Secs. 118, 119.]

EVIDENCE—VARYING INSURANCE POLICY BY PAROL.

8. A policy described the building insured as "one-story frame . . . building and addition." When the policy was issued no addition existed. The assured informed the soliciting agent that he wished to extend the

building, and the agent fixed the value on the building, including the addition which was to be erected. *Held,* that parol evidence of the value of the building after the addition had been completed was admissible in an action on the policy for a loss occurring after the completion of the addition.

INSURANCE—PROOF OF LOSS—SUFFICIENCY.

9. Where a stock of merchandise insured was totally destroyed, proof of loss, though failing to give the cash value of each item insured and the amount of the loss thereon, as required by the policy, was sufficient.

CLARK v. ROLLER.
September 26, 1905.
[51 S. E. 816]

DEEDS—LANDS CONVEYED.

The deed of H. of "all and every part of that certain tract of land . . which was conveyed to H. by S. by deed [described] to which said H. has legal title under the conveyances from C. and G., the orginal patentees of the larger tract of land of which said tract forms a part, the same having been described and conveyed in said deed to the said H. from the said S. as containing by survey" 391 acres, conveys the entire tract of 391 acres conveyed by S. to H., and not merely so much of it as was actually within the grants of C. and H.; the reference thereto being used merely for the purpose of showing from what source the land was derived and as a help to trace the title.

MERRIMAN v. COVER, DRAYTON & LEONARD.
September 21, 1905.
[51 S. E. 817.]

CONTRACTS—RESTRAINT OF TRADE—VALIDITY.

1. A partnership procured a right of way for a railroad, and agreed to ship no bark over its road, except to the owner of the land, unless he refused to pay the market price therefor. There was language in the contract warranting the inference that the road was to be operated as a common carrier, and other language warranting a contrary inference. *Held,* that the contract did not on its face show that the road was to be operated as a common carrier, and the restriction was not on its face invalid.

SAME.

2. Where a contract in restraint of trade is limited, and is supported by a valuable consideration, the contract is valid, if the restraint is reasonable and not injurious to the public.

[Ed. Note.—For cases in point, see vol. 11, Cent. Dig. Contracts, Secs. 542-544.]

SAME.

3. Whether a contract in restraint of trade is reasonable is determined by a consideration of whether it only affords a fair protection to the